

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO**

**ANGEL DAVID MORALES
VALLELLANES,
Plaintiff,**

v.

**JOHN POTTER, UNITED STATES
POSTMASTER GENERAL, ET ALS.,
Defendants.**

CIVIL NO. 97-2459 (GAG)

**DAMAGES BASED ON
RETALIATION AND
DISCRIMINATION; PROHIBITED
PERSONNEL PRACTICES; UNFAIR
LABOR PRACTICES; BREACH OF
COLLECTIVE BARGAINING
AGREEMENT**

**TRIAL BY JURY IS HEREBY
REQUESTED**

REPLY TO OPPOSITION TO MOTION TO VACATE

COMES NOW, plaintiff Angel David Morales-Vallellanes through his legal counsel and very respectfully inform this Honorable Court:

1. On September 13, 2006 Defendant filed his Opposition to Motion to Vacate (docket number 295) but surprisingly said motion does not mention anything about the fact that the deadline of July 1st, 2006 was a Saturday, and therefore applies Rule 6(a) of the Federal Rules of Civil Procedure.
2. In consequence to the above, to Defendant is no longer an issue the alleged tardiness in providing Dr. Hoyos' expert witness report.
3. Also, at this juncture Defendant does not react to the allegations that said party is in contempt to the Honorable Court's order as it did not announced Doctor Fortuño as his expert witness until September 5, 2006 after 110 days elapsed from the deadline order (May 12, 2006) and 126 days after the pretrial/settlement conference held on April 26, 2006. Still as of this date Defendant has not announced an expert witness to this Honorable Court because said party mentioned its decision to retain Doctor Fortuño in that capacity in a letter dated August 30, 2006 and handed to the

undersigned attorney on September 5, 2006, but it was never announced and/or notified to this Honorable Court in accordance to the order dated April 26, 2006 (docket number 280) which set said deadline back on May 12, 2006.

4. Notwithstanding, Defendant confirms Plaintiff version that on Friday June 30th, 2006 at 3:00 p.m. the U.S. Attorney's Office was closed and that a person by the name of Ray Angleró works in the building as a security guard. The aforesaid admissions by Defendant show the good faith of Plaintiff to comply with this Honorable Court order when personally went to the U.S. Attorney's Office to provide the documents.

5. Further, and just for discussion purposes, if Defendant's arguments are considered correct regarding the "*various options available*" to Plaintiff in order to provide the expert witness report, it does not invalid the fact that according to the application of Fed. R. Civ. P 6 (a), Plaintiff had up to July 3, 2006 to file his expert's witness report.

6. On the other hand, Defendant tries to excuses its noncompliance to the Honorable Court's order by forcing the acceptance of his expert witness who never announced in accordance to the Court's order dated April 26, 2006 (docket number 280). Said conduct distorts the essence and spirit of the April 26, 2006 order as it would allow Defendant to use an expert witness after four (4) months elapsed from the deadline of May 12, 2006.

7. It is important to notice that discovery in the above captioned case ended on September 2005 (One year ago) and at the pretrial/settlement conference held on April 26, 2006 Defendant requested the Honorable Court for permission to take deposition because said party "forgot" to take them during the discovery proceedings ended back on September 2005. Therefore, the Honorable Court limited the discovery to depositions.

WHEREFORE, it is respectfully requested from this Honorable Court to take notice of the

above and preclude Defendant from the use of any expert witness at trial.

RESPECTFULLY SUBMITTED.

I HEREBY CERTIFY that on September 15, 2006, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF System which will send notification of such filing to the following: **Fidel A. Sevillano-Del Río, Esq.**, Assistant U.S. Attorney, Federico Degetau Federal Build., 150 Carlos Chardón Av., Hato Rey, Puerto Rico 00918.

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